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HOUSE BILL 2409 By
Buck

SENATE BILL 2971
By Gilbert

AN ACT to amend Tennessee Code Annotated, Title 40, Chapter 33, Part 2, relative to the seizure and forfeiture of certain property.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 40-33-204, is amended by deleting subsections (b), (c) and (e) and substituting instead the following:

(b) The officer making the seizure shall apply for a forfeiture warrant by filing an affidavit within five (5) working days following the property seizure. The forfeiture warrant shall be based upon proof by affidavit and shall have attached to it a copy of the notice of seizure. The hearing on the application for a forfeiture warrant shall be ex parte and may be transcribed or videotaped but in all cases shall be recorded. The affidavit in support of a forfeiture warrant shall state the following:

- (1) The legal and factual basis making such property subject to forfeiture;
- (2) If the owner of the property was not the person in possession of the property at the time of seizure and can be determined from public records of titles, registrations or other recorded documents, the affidavit shall state with particular specificity the officer's probable cause for believing that the owner's interest in such property is nevertheless subject to forfeiture as well as the legal and factual basis for forfeiture of such interest; and

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(3) If the interest of a secured party with a duly perfected security interest, as reflected in public records of titles, registration or other recorded documents, is sought to be forfeited, the affidavit shall state with particular specificity the officer's probable cause for believing that the secured party's interest in such property is nevertheless subject to forfeiture as well as legal and factual basis for forfeiture of such interest.

(c) (1) The judge shall issue the forfeiture warrant if such judge finds that the offered proof establishes probable cause to believe that:

(A) The property is subject to forfeiture; and

(B) If the property is owned by one whose interest is described in public records of titles, registrations or other recorded documents, that such owner's interest is subject to forfeiture under the applicable provision of law.

(2) If the owner of property for which a forfeiture warrant is issued was not the person in possession of the property at the time of the seizure, the judge shall make specific written findings of fact in support of such judge's determination that there was probable cause to believe that the owner's interest in such property is nevertheless subject to forfeiture pursuant to this part.

(3) If the seizing officer asserts to the judge that such officer was unable to determine the owner of the seized property or whether the owner's interest is subject to forfeiture within the required five-day period, the judge may grant up to ten (10) additional days to seek a forfeiture warrant if the judge finds that the seizing officer has:

(A) Exercised due diligence and good faith in attempting to determine the owner of the property or whether the owner's interest is subject to forfeiture; and

(B) Made a factual showing that because of the existence of extraordinary and unusual circumstances an exception to the five-day forfeiture warrant requirement is justified.

(e) Upon issuance of the forfeiture warrant, the judge shall retain the affidavit relied upon in support of the warrant and the officer shall, within seven (7) working days, send the warrant, a copy of the affidavit and the notice of seizure to the applicable agency.

(1) Upon receipt of such documents, an attorney employed by the applicable agency shall conduct a review to determine if the warrant has been issued in conformity with the requirements of this part and if it is facially valid. If the applicable agency determines that the warrant or the issuance thereof does not comply with the requirements of this part or that it is facially invalid, it shall prepare an order stating the reasons for such determination and instructing the seizing agency to return the seized property to the owner or person from whom it was seized. A copy of such order shall be sent to the seizing agency and the judge issuing the forfeiture warrant. A determination as to whether a forfeiture warrant is valid and complies with the requirements of this part shall be made within fourteen (14) days of receipt by the applicable agency.

(2) If the applicable agency determines that the forfeiture warrant was issued in conformity with the requirements of this part and is facially valid, it shall notify any other owner, as may be determined from public records of titles, registration or other recorded documents, or secured party that a forfeiture warrant has been issued. The seizing agency shall maintain a copy of the notice of seizure for all property seized at its main office and such notices and receipts shall be public records.

SECTION 2. Tennessee Code Annotated, Title 40, Chapter 33, Part 2, is amended by adding the following as a new section:

Section 40-33-215.

(a) A person who has property seized in accordance with the provisions of this part shall have a cause of action against the seizing agency if the seizing officer acted in bad faith in seizing or failing to return property seized pursuant to this part.

(b) A person who prevails in an action against a seizing agency pursuant to this section shall be entitled to:

(1) Reasonable attorney fees and court costs necessarily incurred in seeking the return of the seized property and in bringing the action pursuant to this section; and

(2) Monetary damages resulting from the improper seizure of the property.

Monetary damages recoverable under this section shall be limited to the rental value of property similar to that which was seized for the period of time it was seized but in no event shall such damages exceed the value of the seized property.

SECTION 2. This act shall take effect July 1, 1998, the public welfare requiring it.